IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1250 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURESH VELJIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1250 of 1990

MR.ANIRUDDHA MAVLANKAR, ADVOCATE

FOR M/S GIRISH PATEL ASSOCIATES for the Petitioner

MR SHIRAJ GHORI, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI

Date of decision: 12/03/2004

ORAL JUDGEMENT

1. The petitioner seeks a declaration that the action of the respondent - State Government of not

promoting him from Class II to Class I post of Medical Officer w.e.f. 24th February 1981, was violative of Articles 14 and 16 of the Constitution, and also of the government resolution regarding the reservation and roaster in favour of the scheduled Tribe and therefore, illegal and void. A direction is sought that the petitioner should be granted deemed promotion as Class I Medical Officer w.e.f. 24th September 1981. In the alternative, it has been prayed to declare that the petitioner was entitled to be promoted as Class I Medical Officer w.e.f. 3rd August 1985, as per the recruitment rules.

2. According to the petitioner, he was selected as Class II Medical Officer through the P.S.C. and appointed to the post by letter dated 27th July 1977, a copy of which is at Annexure "A" to the petition. There were no recruitment rules for the post of promotion, which was Medical Officer Class I. However, the benefits of roster and reservation were applied in case of direct recruitment as well as in promotion in State services since 1976. In the category of Medical Officer Class II, one Dr. Miss N.K.Patel and the petitioner were the two schedule tribe employees. It is stated that, by government resolution dated 24th September 1981, a copy of which is at Annexure "B" to the petitioner, nineteen Class II Medical Officers came to be promoted as Class I Medical Officers. However, Dr. Miss N.K.Patel, who was at Srl. No.4 in the order of promotion and who belonged to a Scheduled Tribe, declined promotion, whereupon her promotion was cancelled. Therefore, the petitioner was entitled to promotion to Class I post, as per the roster as a Schedule Tribe candidate in her place. The action of the respondents in not promoting the petitioner as Class I Medical Officer on 24th September 1981 was, therefore, in breach of the reservation policy and violated Articles 14 and 16 of the Constitution. According to the petitioner, when the promotions were given under the resolution dated 24th September 1981, the petitioner did not know that he was entitled to the benefits of reservation and roster, and therefore, he did not raise any objection at that time. Since the petitioner was the only Scheduled Tribe candidate available for promotion to the said post, he was entitled to be promoted as per the reservation policy of the government and the subsequently enacted rules which came into force from 24th November 1981, namely, the Gujarat Insurance Medical Officers Class I (Allopathy) E.S.I.S. Recruitment rules, 1981, could not be applied to him. The petitioner came to be promoted under the new recruitment rules as late as on 7th October 1987 even

though he had completed eight years' of service in Class II post on 2nd August 1985 and was, therefore, eligible even under the recruitment rules for promotion.

3. The learned counsel appearing for the petitioner strongly contended that, since the petitioner was a Schedule Tribe candidate, who was duly qualified for the post of promotion and had a brilliant academic career, he ought to have been promoted in place of Dr. Miss N.K.Patel, who was selected to the Class I post against Schedule Tribe vacancy, but had refused the promotion. He submitted that, since the petitioner was the only Schedule Tribe candidate left in the Class II cadre, he became entitled to be appointed as per the prevalent roster for being promoted to the said post from 24th September 1981. The learned counsel argued that, at the time when the vacancy arose, the new rules had not come into force and therefore, on the date when the petitioner was entitled to be considered against the vacancy which, as per the roster, was required to be filled in by appointing the Scheduled Tribe candidate, the recruitment rules could not have been given a retrospective effect so as to deny considering the petitioner's case as the only Scheduled Tribe candidate available for promotion to Class I post in view of the refusal to promotion by the other Schedule Tribe candidate, who was senior to him.

4. The learned Assistant Government Pleader appearing for the respondent authority submitted that even though the recruitment rules came into force from 24th November 1981, the earlier promotions were given on the basis of the draft rules and the requirement of eight years service in Class II cadre was uniformly considered even at the time of the earlier selection, pursuant to which, the promotions were given under the resolution dated 24-9-1981. It was argued that, at the time when the petitioner's case was considered for promotion, the recruitment rules already were in force and therefore, it was required to be seen whether the petitioner satisfied the eligibility criteria of eight years of service in Class II cadre. It was submitted that, in the year 1981, the petitioner had put in hardly four years of service and as per the then existing norms, he was not eligible for promotion to the Class I post, and therefore, he was not required to be considered at that time. It was contended that no person was promoted to Class I post after the petitioner became eligible under the rules till he came to be promoted in October 1987. He, therefore, submitted that no fundamental right of the petitioner was violated.

5. The petitioner was appointed as Insurance Medical Officer, Class II on the temporary and provisional basis by order dated 27-7-1977 and posted at the E.S.I.S. Dispensary, Rajkot, as per the order at Annexure "A" to the petition. As per Clause (11) of the appointment order, the appointment was subject to the terms and conditions prescribed by the government from time to time. It is a settled legal position that an employee has no right to promotion, but he has only a right to be considered for promotion alongwith others, who are similarly situated and qualified for such promotion. Initial appointment to a post in the lower cadre will not create any right in favour of such employee, of claiming that his promotion at a future date should be regulated only by the rules of promotion, which existed at the time of his recruitment in the lower cadre. The promotion of such employee would be governed as per the recruitment rules or the norms for promotion prevalent at the time when he is considered for such promotion. The recruitment rules for the Class I post have been framed under Article 309 of the Constitution of India and were operative from 24th November 1981. As per Rule 2(a) of the said rules, the appointment to the post of Insurance Medical Officer Class I (Allopathy) was to be made, inter alia, either by promotion of a person of proved merit and efficiency from amongst the persons working as Insurance Medical Officer Class II under the E.S.I. Scheme having minimum five years' experience in respect of Master Degree Holder and minimum eight years' experience in respect of Degree Holder. Since the petitioner was a Degree Holder, minimum eight years' experience was required before he could be considered for appointment to the Class I post. Merely because he belonged to the Scheduled Tribe cadre, it did not entitle him to an appointment contrary to the eligibility criteria laid down by the rules. It is not even the petitioner's case that no person junior to him came to be appointed to the Class I post before coming into force of the recruitment rules for the said post of promotion.

6. Admittedly, the petitioner completed eight years of service in Class II cadre only on 2nd August 1985 and therefore, he had no right even to be considered for the post of promotion prior to that date since he was not eligible for such consideration. Admittedly, after 2nd August 1985 till the petitioner came to be promoted on 7th October 1987, no person junior to the petitioner was promoted. In the affidavit-in-reply, which has been filed on behalf of the State, it has been categorically stated in paragraph 4 that, due to the disturbed situation and due to the fact that the government did not

have immediate requirement for making promotions to Class I post, no other person had been promoted till October 1987 when the petitioner was promoted. The petitioner was promoted by the very next Departmental Promotion Committee. It is stated that the respondents have strictly followed the roster policy and have given the petitioner the advantage available to him by virtue of his being a scheduled tribe candidate and no one was allowed to steel a march over him. The petitioner cannot have a right to insist that he should have been appointed from the date on which the vacancy fell vacant. Whether to fill in the vacancy or not would depend on various factors and the processed involved for filling any such vacancy and there is no automatic right to promotion or being considered for promotion from any anterior date when the post may have fallen vacant.

7. In the above view of the matter, the petitioner has not been able to establish that he was entitled to be considered for promotion from any earlier date or that he should have been given benefit of the roster point that went to Schedule Tribe candidate from an earlier date. Since no right of the petitioner is violated, the contentions canvassed on behalf of the petitioner cannot be accepted. The petition, therefore, fails and is hereby rejected. Rule is discharged with no order as to costs.

[R.K.ABICHANDANI, J.]

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